

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:09-cr-10243-MLW

4
5 UNITED STATES OF AMERICA

6
7 vs.

8
9 RYAN HARRIS

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11 *****

12
13 For Trial Before:
14 Chief Judge Mark L. Wolf

15 ***Excerpt Transcript:*** Recharge of Jury

16
17 United States District Court
18 District of Massachusetts (Boston.)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 March 1, 2012

22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
One Courthouse Way, Room 5200, Boston, MA 02210
bulldog@richromanow.com

A P P E A R A N C E S

ADAM J. BOOKBINDER, ESQ.

United States Attorney's Office
John Joseph Moakley Federal Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3112
E-mail: Adam.bookbinder@usdoj.gov

and

MONA SEDKY, ESQ.

U.S. Department of Justice
601 D. Street, N.W.
Washington, D.C. 20530
(202) 353-4304
Email: Mona.sedky@usdoj.gov
For the United States of America

CHARLES P. MCGINTY, ESQ.

Federal Public Defender Office
District of Massachusetts
51 Sleeper Street, 5th Floor
Boston, Massachusetts 02210
(617) 223-8080
E-mail: Charles_mcginty@fd.org
For the defendant

1 P R O C E E D I N G S

2 (*Excerpt Begins*)

3 THE COURT: As I told you yesterday, there are
4 now eight charges of wire fraud for you to decide.
5 You're not being asked whether the government has proven
6 the original earlier Count 1, the conspiracy charge that
7 was read to you at the beginning of the trial, that
8 charge has been removed from the copy of the indictment
9 you have in the jury room and the charges have been
10 renumbered. So all of the charges now are wire fraud.
11 Okay? And don't read the indictment. We'll get to it.
12 We'll read it together.

13 Do you remember I told you yesterday that the
14 indictment is merely an accusation, it's not evidence or
15 proof that the defendant is guilty of any or all of the
16 wire frauds charged. Therefore, the government must
17 prove he's guilty beyond a reasonable doubt to achieve
18 his conviction on any charge. Each count alleges a
19 separate crime. You should consider each count
20 separately and return a separate verdict for each
21 count.

22 Unless I gave you a limiting instruction in the
23 course of the case, you may consider all of the evidence
24 in deciding each count, and if I gave you a limiting
25 instruction, you have to use the information only for

1 the limited purpose I directed. As to each separate
2 count, you must determine whether the government has
3 proved the defendant guilty beyond a reasonable doubt.

4 Evidence provided by or concerning other people
5 may be considered by you. However, the fact that
6 another person pled guilty to committing some other
7 crime is not itself evidence or proof that Harris is
8 guilty of any of the wire charges in this case. Your
9 verdict should be based solely upon the evidence or lack
10 of evidence concerning Mr. Harris, in accordance with my
11 instructions, and without regard to the guilty pleas of
12 others. Depending on your view of the evidence, you
13 could find Mr. Harris not guilty on all counts, guilty
14 on some counts and not guilty on other counts, or guilty
15 on all the counts. That's up to you.

16 You'll see that the indictment charges that
17 certain crimes were committed on or about a particular
18 date. It is not necessary for the government to prove
19 beyond a reasonable doubt that the crimes were committed
20 on a particular date. The government does have to prove
21 that the crimes were committed on a date reasonably near
22 the dates alleged in the indictment. But the government
23 doesn't have to prove the precise date.

24 Then, as I said, all of the remaining charges,
25 all of the remaining counts charge Mr. Harris with

1 committing wire fraud. And the charging language -- now
2 you can look at it, is in Paragraph 1. It says: "On or
3 about the dates set forth below, in the District of
4 Massachusetts and elsewhere, Ryan Harris, having
5 knowingly devised a scheme to defraud and to obtain
6 money and property by means of material false and
7 fraudulent pretenses, representations and promises,
8 transmitted and caused to be transmitted in interstate
9 commerce wire communications, including writings,
10 signals and sound, for the purpose of executing the
11 scheme to defraud and aided and abetted others in doing
12 so as set forth below."

13 And actually I'm not instructing you on aiding
14 and abetting. You're going to have to decide whether
15 Mr. Harris alone -- well, whether Mr. Harris committed
16 all of the -- well, not alone, but Mr. Harris committed
17 all of the elements of wire fraud as I'm going to
18 describe them to you.

19 And then each count alleges that a particular
20 wire was sent or caused to be sent by Mr. Harris in
21 furtherance of the alleged scheme. So Count 1 charges:
22 "In about 2005, NH," Nathan Hanshaw, "accessed the
23 internet from Massachusetts and downloaded Harris's
24 Sigma cable modem hacking product" in furtherance of the
25 alleged scheme in which it's charged Mr. Harris

1 participated in.

2 Count 2 charges that in or about 2007 Hanshaw
3 accessed the internet from Massachusetts and downloaded
4 Harris's Sigma X cable modem hacking product for the
5 purpose of executing a scheme to defraud.

6 And then it goes right down the line. If you
7 want, I'll read them all now, or perhaps it's not
8 necessary. But I can read them all to you.

9 Count 3 charges that on or about January 15,
10 2007, in furtherance of the scheme, Hanshaw accessed the
11 internet from Massachusetts using Harris's products and
12 a cloned MAC address and participated in an on-line chat
13 discussing his hacking activities.

14 Count 4 charges that on or about December 5,
15 2007 Hanshaw accessed the internet from Massachusetts
16 using Harris's products and a cloned MAC address and
17 participated in an on-line chat discussing his hacking
18 activities.

19 Count 5 charges that on about June of 2008, in
20 furtherance of the scheme to defraud, Jose Larosa
21 accessed Harris's TCNISO website from Massachusetts and
22 bought a cable modem and ancillary products.

23 Count 6 charges that Larosa accessed the
24 Internet from Massachusetts using Harris's products and
25 a cloned MAC address and obtained free Internet access

1 on about July of 2008.

2 Count 7 charges that William Madeiros, on about
3 June -- or in about June of 2009 accessed Harris's
4 TCNISO website for Massachusetts and bought a modified
5 cable modem and ancillary products.

6 And Count 8 charges that Madeira accessed the
7 internet from Massachusetts on about July of 2009, in
8 furtherance of the scheme, using Harris's products and a
9 cloned MAC address and obtained free internet service.

10 So those are the charges. Now I'm going to
11 tell you again what the government has to prove beyond a
12 reasonable doubt to prove wire fraud, each charge of
13 wire fraud.

14 The government has to prove the following
15 things beyond a reasonable doubt. First, that there was
16 a scheme substantially as charged in the indictment to
17 defraud or obtain something of value from an internet
18 service provider or internet service providers by means
19 of false or fraudulent pretext. Second, that the
20 defendant knowingly and willfully participated in the
21 scheme with an intent to defraud. Third, on or about
22 the dates alleged, the defendant transmitted or caused
23 to be transmitted an interstate wire communication for
24 the purpose of furthering the scheme.

25 If the government fails to prove any of these

1 elements beyond a reasonable doubt, you must find the
2 defendant not guilty on the counts you are considering.
3 If the government proves all of these elements beyond a
4 reasonable doubt, with regard to a particular count, you
5 must find him guilty of that charge.

6 The first thing that the government must prove
7 beyond a reasonable doubt is that the defendant
8 participated in a scheme to defraud that involved
9 material false or fraudulent pretenses. A scheme is a
10 plan or a course of conduct. The term "to defraud"
11 means to deceive someone of something of value by means
12 of deception or cheating. A scheme to defraud
13 ordinarily includes a desire to bring about some gain or
14 benefit for oneself, or some other person, or desire to
15 cause loss to someone else. The term "false or
16 fraudulent pretenses" means any intentional material
17 false representation or omission including material
18 direct false representations and the deliberate
19 concealment of material facts. A fact is material if it
20 has a natural tendency to influence or is capable of
21 influencing whoever or whatever is making a particular
22 decision.

23 In essence, in this case the government must,
24 among other things, prove beyond a reasonable doubt the
25 existence of a scheme to deprive internet service

1 providers of payment for internet service based on
2 intentional material false representations or omissions
3 relating to a particular device concerning whether that
4 device was authorized to receive such internet service.
5 While the government must prove that the scheme alleged
6 in the indictment existed, it does not have to prove
7 that it succeeded.

8 The next thing the government must prove beyond
9 a reasonable doubt is that the defendant participated in
10 the alleged scheme knowingly and willfully and with the
11 intent to defraud. The government does not have to
12 prove that the defendant originated the alleged scheme,
13 it only has to prove that he participated in it with the
14 required knowledge and intent to defraud. To act
15 knowingly means to act intentionally, not by accident or
16 mistake. To act willfully means to intentionally do
17 something known to be unlawful. An intent to defraud
18 means to act knowingly and with specific intent to
19 deceive for the purpose of causing some financial loss
20 or to obtain money for the defendant or someone else or
21 for both of these purposes.

22 It would not be enough to prove wire fraud for
23 the government to prove only that Harris sold one or
24 more products that he knew would be used to commit a
25 crime. However, the nature of the products sold and any

1 knowledge Harris has as to how it would be used are
2 evidence that you could consider, along with all the
3 other evidence, in deciding whether the government has
4 proven any or all of the wire fraud charges in this
5 case.

6 Intent or knowledge need not be proven by
7 direct evidence, therefore circumstantial evidence as
8 well as direct evidence may be important to determining
9 the defendant's state of mind. In determining what the
10 defendant knew or intended at a particular time you may
11 consider any statements made or anything done or not
12 done by the defendant and all other facts and
13 circumstances proven by the evidence. You may infer,
14 but you are certainly not required to infer, that a
15 person intends the natural and probable consequences of
16 acts knowingly done or deliberately not done. It's
17 entirely up to you, however, to decide what facts are
18 proven by the direct and circumstantial evidence.

19 The last thing that the government must prove
20 beyond a reasonable doubt is that on or about the date
21 alleged in the indictment, for the count that you are
22 considering, the defendant transmitted or caused to be
23 transmitted an interstate wire communication in
24 furtherance of the alleged scheme. The use of the
25 internet to send a message, such as an e-mail or a

1 communication to a website, may be a wire
2 communication. An interstate wire communication is a
3 wire communication from one state to another. The wire
4 communication does not have to be essential to the
5 scheme or be itself fraudulent, however it must be made
6 as part of an attempt to execute the scheme or
7 accomplish one of its goals.

8 To prove that the defendant caused a particular
9 interstate wire communication to occur, the government
10 does not have to prove that he sent the wire
11 communication himself. It would be sufficient if the
12 government proves beyond a reasonable doubt that he knew
13 that the use of interstate wires would follow in the
14 course of the scheme or that it was reasonably
15 foreseeable that the interstate wires would be used as a
16 result of his actions. It is the use of interstate
17 wires generally rather than the specific wire
18 transmission that is charged that must be proved to have
19 been reasonably foreseeable as a result of the scheme.

20 Therefore, if it is proven that Harris
21 participated in the alleged scheme or did something
22 relating to it which he knew or should have reasonably
23 foreseen would result in interstate wire transmissions
24 being used in an effort to execute that scheme or to
25 accomplish its goals, you may find the use of interstate

1 wire communications element to be proven.

2 As I said earlier, if you find the government
3 has proven beyond a reasonable doubt every essential
4 element of wire fraud concerning a particular count, you
5 shall find the defendant guilty of that count. If the
6 government has failed to meet that burden, you shall
7 find the defendant not guilty of that count. As I also
8 explained, depending on your view of the evidence, you
9 may find the defendant not guilty on all counts, guilty
10 on some counts and not guilty on other counts, or guilty
11 on all counts.

12 So that's the case-specific portion of the
13 instructions I gave you yesterday. Again, it's
14 important to consider this in the context of everything
15 I told you yesterday, but didn't repeat today, and
16 hopefully having told you that again, it will be helpful
17 in your deliberations.

18 **(Excerpt Ends)**

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the forgoing transcript of the
record, of the aforementioned **excerpt**, is a true and
accurate transcription of my stenographic notes before
Chief Judge Mark L. Wolf, on March 1, 2012, to the best
of my skill and ability.

/s/ Richard H. Romanow 03-06-12

RICHARD H. ROMANOW Date